

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

WILLIAM PHILLIPS,

Plaintiff,

-against-

5:13-CV-0955 (LEK/TWD)

CORTLAND COUNTY SHERIFF'S  
DEPARTMENT,

Defendant.

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**ORDER**

This matter comes before the Court following a Report-Recommendation filed on September 30, 2013, by the Honorable Thérèse Wiley Dancks, U.S. Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3. Dkt. No. 3 (“Report-Recommendation”).

A district court must review *de novo* any objected-to portions of a magistrate judge’s report-recommendation or specific proposed findings or recommendations therein and “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b); accord FED. R. CIV. P. 72(b); see also *Morris v. Local 804, Int’l Bhd. of Teamsters*, 167 F. App’x 230, 232 (2d Cir. 2006); Barnes v. Prack, No. 11-CV-0857, 2013 WL 1121353, at \*1 (N.D.N.Y. Mar. 18, 2013). If no objections are made, or if an objection is general, conclusory, perfunctory, or a mere reiteration of an argument made to the magistrate judge, a district court need review that aspect of a report-recommendation only for clear error. Chylinski v. Bank of Am., N.A., 434 F. App’x 47, 48 (2d Cir. 2011); Barnes, 2013 WL 1121353, at \*1; Farid v. Bouey, 554 F. Supp. 2d 301, 306-07 & n.2 (N.D.N.Y. 2008); see also *Machicote v. Ercole*, No. 06 Civ. 13320, 2011 WL 3809920, at \*2 (S.D.N.Y. Aug. 25, 2011) (“[E]ven a *pro se* party’s objections to a Report and

Recommendation must be specific and clearly aimed at particular findings in the magistrate's proposal, such that no party be allowed a second bite at the apple by simply relitigating a prior argument.”).

The Report-Recommendation recommends that Plaintiff's Complaint be dismissed pursuant to 28 U.S.C. § 1915(e) for its failure to allege sufficient facts upon which liability on the part of Cortland County (“County”) or the individual members of Defendant Cortland County Sheriff's Department (“Department”) might be premised. See Report-Rec. at 5-9. Jude Dancks also determined that the Department did not have an independent legal identity and was therefore not amenable to suit. See id. at 5. Plaintiff has filed Objections that focus primarily on other lawsuits he has filed. Dkt. No. 4 (“Objections”). He also alleges that members of the Department informed other inmates about lawsuits Plaintiff had previously filed and “made jokes” about Plaintiff. See id. at 2-3.<sup>1</sup> The Objections have not alleged sufficient facts upon which liability for the County or members of the Department could be founded, and have certainly not demonstrated that the Report-Recommendation's determination that the Complaint failed to do so was erroneous.

Accordingly, it is hereby:

**ORDERED**, that the Report-Recommendation (Dkt. No. 4) is **APPROVED** and **ADOPTED in its entirety**; and it is further

**ORDERED**, that the Complaint's (Dkt. No. 1) claim against the Department is **DISMISSED with prejudice** pursuant to 28 U.S.C. § 1915(e); and it is further

**ORDERED**, that if Plaintiff wishes to pursue this action, he must file an amended complaint within **thirty (30) days** of the filing date of this Order that remedies the defects identified by the

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<sup>1</sup> The pagination corresponds to the page numbers assigned by ECF.

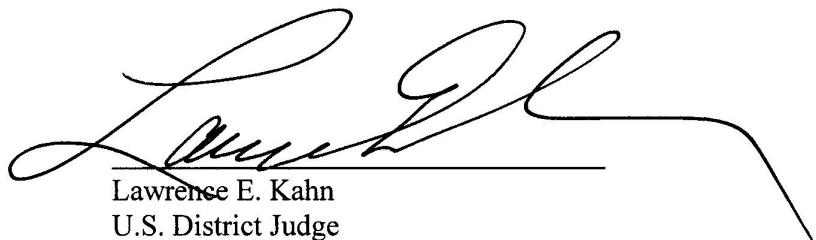
Report-Recommendation; and it is further

**ORDERED**, that if Plaintiff fails to timely file an amended complaint as directed above, the Clerk of the Court shall enter judgment indicating that the Complaint (Dkt. No. 1) is **DISMISSED with prejudice** without further order of this Court pursuant to 28 U.S.C. § 1915(e) for failure to state a claim upon which relief may be granted. In that event, the Clerk of the Court is directed to close this case; and it is further

**ORDERED**, that the Clerk of the Court serve a copy of this Order upon the parties to this action.

**IT IS SO ORDERED.**

DATED: December 20, 2013  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge